



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH THE

U.S. DEPARTMENT OF THE ARMY

FORT EUSTIS

SECTION A: Purpose

This is a special order by consent issued under the authority of Section 62.1-44.15(8a) of the Code of Virginia between the State Water Control Board and Fort Eustis to resolve certain violations of the State Water Control Law and regulations of the State Water Control Board.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a Consent Special Order.
7. "Regulation" means 9 VAC 25-31-10 *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Fort Eustis" means the United States Army Transportation Center and Fort Eustis, a Department of the Army installation.

SECTION C: Findings of Facts and Conclusions of Law

1. In 1918, U. S. Government procurement of approximately 9,000 acres resulted in the creation of Camp Eustis in the Hampton Roads area of Virginia, later designated to be Fort Eustis. In 1950 Fort Eustis became the U.S. Army Transportation Center and Fort Eustis.
2. Fort Eustis owns and operates a sanitary sewage collection system consisting of gravity sewer lines, pump stations and force mains that collect sewage from Fort Eustis and transport it to the collection system owned by the Hampton Roads Sanitation District.
3. The majority of the Ft. Eustis collection system was installed in the 1940s and the primary piping material is vitrified clay. The collection system includes approximately 150,000 linear feet of gravity sewers, 810 collection system manholes and 19 pump stations.
4. On December 3, 2002, an unpermitted discharge of approximately 100,000 gallons of raw sewage overflowed from the Fort Eustis collection system. A pipe in the sewage collection system became blocked and sewage backed up into the pipe. The crown of the pipe was corroded and the sewage overflowed through the crown and entered into an adjacent storm sewer where it flowed out a stormwater outfall and into an unnamed tributary to the Warwick River. Fort Eustis personnel responded immediately to the line break by damming the tributary and recovering the majority of the spilled sewage. Fort Eustis repaired the line with a cured in-place liner by December 30, 2002 and smoke tested the immediate area and found no other system leaks.
5. Notice of Violation No. 02-12-TRO-002 was issued to Fort Eustis on December 19, 2002, in regard to the incident described in paragraph 4 above.
6. Section 62.1-44.5 of the Code and part 9 VAC 25-31-50 of the Regulation prohibit discharges of sewage to State waters except in accordance with a Virginia Pollutant Discharge Elimination System ("VPDES") permit. Fort Eustis does not possess a VPDES permit that allows the discharge of sewage.
7. In April, 2003, Fort Eustis began monitoring sewage flows leaving the base and rainfall data. The data indicated that the collection system is subject to excessive infiltration and inflow (I/I) of stormwater and groundwater. Rain events typically cause immediate significant spikes in the sewage flows leaving Fort Eustis.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a), orders Fort Eustis, and Fort Eustis agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Fort Eustis, for good cause shown by Fort Eustis, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Fort Eustis by DEQ and cited above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Fort Eustis admits the jurisdictional allegations contained herein. Fort Eustis neither admits nor denies any allegations of fact or law set forth in the Order.
4. With respect to the findings and conclusions set forth in Section C of this Order, Fort Eustis acknowledges that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to an administrative hearing or judicial determination pertaining thereto. Nothing herein shall be construed as a waiver of Fort Eustis's substantive or procedural rights to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Fort Eustis to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Fort Eustis shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, national emergency declared by the President, labor dispute or other similar occurrence beyond Fort Eustis' control. Fort Eustis shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fort Eustis shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify the Regional Director within 5 days of learning of any condition above which Fort Eustis intends to assert will result in the impossibility of compliance shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. It is the expectation of the parties to this Order that all obligations of Fort Eustis arising under this Order will be fully funded. Fort Eustis agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Consent Order. Any requirement for the payment or obligation of funds by Fort Eustis established by the terms of this Order shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. If appropriated funds are not available to fulfill Fort Eustis' obligations under this Order, the Board reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Order.
9. This Order shall become effective upon execution by both the Director or his designee and Fort Eustis. Notwithstanding the foregoing, Fort Eustis agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Fort Eustis. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fort Eustis from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Fort Eustis voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 1, 2004

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

Fort Eustis voluntarily agrees to the issuance of this Order:

By:

Ronnie T. Ellis

Ronnie T. Ellis
Colonel, U.S. Army
Garrison Commander

Date: 25 June 2004

Commonwealth of Virginia

City/County of Newport News

The foregoing document was signed and acknowledged before me this 25th day of

June, 2004, by Ronnie T. Ellis, who is Garrison Commander
name title

of the Department of the Army, Fort Eustis, on behalf of said Department.

Mary G. Pingley
Notary Public

My commission expires: MY COMM. EXPS. MAY 31, 2006

APPENDIX A
U. S. DEPARTMENT OF THE ARMY
FORT EUSTIS

Fort Eustis, U.S. Army, shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. By October 1, 2004, submit to DEQ a progress report on the status of completion of the SSES described in item # 3 below.
3. By March 1, 2005 complete and submit to DEQ a Sanitary Sewer Evaluation Survey (SSES) of the Fort Eustis collection system. The purpose of the SSES is to document the existing system layout and load capacities, identify areas requiring rehabilitation, replacement, improvement, and/or maintenance, and propose recommendations for rehabilitation, replacement, infiltration and inflow reduction, and improved operations and maintenance.

Fort Eustis shall incorporate, at a minimum, the following activities and work into the scope of the SSES:

- Assessment of historical sanitary sewer overflow events to determine causes of overflows
- On-site rainfall recording and gauging
- On-site groundwater gauging to determine the extent of groundwater infiltration into the collection system
- Hydraulic modeling of the collection system
- Wet and dry flow monitoring of the collection system
- Evaluation of existing capacity in the collection system
- Physical and television inspection of those parts and subsystems of the sanitary sewer system that are contributing to the occurrence of sanitary sewer overflows
- A sanitary sewer rehabilitation needs assessment
- Recommendations for rehabilitation, replacement and infiltration and inflow reduction work
- Evaluation of current operations and maintenance and personnel needs and

recommendations for meeting those needs and improving operation and maintenance practices

The SSES shall include for DEQ's review and approval a prioritized list of sanitary sewer replacement, rehabilitation and infiltration and inflow reduction projects, including projects addressing personnel needs and operations and maintenance improvements, the estimated costs of the projects, and an implementation schedule for completion of the projects. Upon receipt of approval from DEQ, said prioritized list, schedule and project description shall become a part of and enforceable under the terms of this Order.